

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Regulation of Prepaid Calling Card Services) WC Docket No. 05-68

REPLY COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association (USTA)¹ submits its reply comments through the undersigned, in response to comments filed in the above-referenced matter before the Federal Communications Commission (FCC or Commission).

DISCUSSION

I. Other Prepaid Calling Card Providers Are Obligated To Comply with the Law Affirmed by the Commission in the AT&T Order.

The Commission should take note that the majority of the commenters in this proceeding are in general agreement that the prepaid calling card service provided under both variants described in AT&T's November 22, 2004 ex parte presentation is a telecommunications service and that calls made using this service are subject to either interstate or intrastate access charges depending on the originating and end points of each call. The Commission's action in this matter should be clear and firm, affirming that the two variants of AT&T's prepaid calling card service are telecommunications services and subject to either interstate or intrastate access charges depending on the nature of each call made. The Commission should not let this opportunity pass without also making clear that all other providers of prepaid calling card services that are offering services like those described in AT&T's original Petition for

¹ USTA is the premier trade association representing service providers and suppliers for the telecommunications industry. USTA members provide a full array of services, including broadband, voice, data, and video over wireline and wireless networks.

Declaratory Ruling,² or in the subsequent November 22 *Ex Parte* Letter,³ must also make universal service contributions on the interstate revenue derived from calls made using such services and must pay appropriate access charges depending on the jurisdictional nature of each call. It is worth noting that at least one carrier – other than AT&T – apparently has acknowledged that it has not contributed to the Universal Service Fund on at least some of its prepaid calling card services⁴ and that it has strongly suggested that it does not need to do so, maintaining that the FCC’s rejection⁵ of AT&T’s position on its prepaid calling card service has no impact on the way this company conducts its calling card operations.⁶ Even though there may

² See *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, Petition of AT&T, WC Docket No. 03-133 (filed May 15, 2003) (Petition for Declaratory Ruling).

³ See Letter from Judy Sello, Senior Attorney, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission (Nov. 22, 2004) (November 22 *Ex Parte* Letter).

⁴ See Thomson StreetEvents, “Final Transcript: IDT-Q2 2005 IDT Corporation Earnings Conference Call,” March 10, 2005, at 14 (Transcript), as cited by AT&T in its Motion for Stay Pending Appeal, Subject to Posting of Security. See *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, Motion for Stay Pending Appeal, Subject to Posting of Security, WC Docket No. 03-133, at 4 (filed March 28, 2005) (Motion for Stay).

⁵ *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services; Regulation of Prepaid Calling Card Services*, Order and Notice of Proposed Rulemaking, WC Docket No. 05-68 (rel. Feb. 23, 2005) (AT&T Order or NPRM).

⁶ In its Motion for Stay, AT&T cited to a number of statements made by the CEO of IDT Corporation (IDT) regarding the impact of the AT&T Order on its prepaid calling card operations. AT&T states that in a recent earnings conference call, the IDT CEO stated that “the FCC’s denial of AT&T’s calling card proceeding is limited to the prepaid calling card services described in AT&T’s original petition to the FCC. IDT does not rely and has not relied on such services for any aspect of its regulatory compliance. And the FCC’s rejection of AT&T’s position has no impact whatsoever on the way IDT has in the past or currently conducts its calling card operations. We are very confident that our calling card business complies with every aspect of the rules and regulations, including the USF regime.” Transcript at 3, as cited by AT&T in its Motion for Stay. See Motion for Stay, Declaration of Adam Panagia at 8. The IDT CEO went on to state that IDT has “high confidence that where we do pay Universal Service payments, we’re paying them correctly. Where we don’t pay, we don’t have to pay based on the way we do business.” Transcript at 14, as cited by AT&T in its Motion for Stay. See Motion for Stay, Declaration of Adam Panagia at 8. Further, specifically with regard to the AT&T proceeding, IDT’s CEO stated that “It is really what AT&T was doing that AT&T only was

not be a proceeding before the Commission involving the regulatory status and obligations of any other carrier's prepaid calling card service, the Commission is still obligated to enforce the law and its rules. The Commission cannot allow any carrier to be advantaged or another one to be penalized simply because the law and rules are enforced with regard to one carrier, but not another. It is imperative that the Commission affirm the law and its rules and then enforce them equally as to all providers of prepaid calling card services.

II. There Is No Need for the Commission To Act on AT&T's Emergency Petition.

Earlier this month AT&T filed an Emergency Petition for Immediate Interim Relief in this docket, asking the Commission "to adopt interim rules to advance universal service and establish regulatory neutrality for all prepaid calling card services by May 17, 2005."⁷ AT&T advocates that the Commission can create the needed regulatory neutrality by requiring all prepaid service providers, regardless of their claimed regulatory classification, to contribute to universal service and to pay interstate access charges on all their services.⁸ AT&T also states that if the Commission is unwilling to limit access charges to interstate charges, then it would agree that all prepaid service providers should contribute to universal service, pay intrastate access charges on calls that originate and terminate within the same state, and pay interstate access charges on all other calls.⁹

There is no need for the Commission to act on the Emergency Petition because what AT&T asks for on an interim basis already exists on a permanent basis. When the Commission issued the AT&T Order responding to AT&T's Petition for Declaratory Ruling, it affirmed the

doing, and that was really the entire scope of that particular ruling." Transcript at 15, as cited by AT&T in its Motion for Stay. See Motion for Stay, Declaration of Adam Panagia at 9.

⁷ *Regulation of Prepaid Calling Card Services*, AT&T Emergency Petition for Immediate Interim Relief, WC Docket No. 05-68, at 1 (filed May 3, 2005) (Emergency Petition).

⁸ See Emergency Petition at 2.

⁹ See *id.*

law for all prepaid calling card services like those described by AT&T in its Petition for Declaratory Ruling. Similarly, the Commission should affirm the law with regard to the two variants of AT&T's prepaid calling card services, as described in AT&T's November 22 *Ex Parte* Letter. The relief AT&T seeks on an interim basis is already the law. All the Commission need do with regard to any other offenders is simply enforce the law. That will ensure that all providers of prepaid calling card services that are offering services like those of AT&T will operate on an equal regulatory footing.

If the Commission were to find in its NPRM that there are some prepaid calling card services that should be classified as information services (or enhanced services), the Commission could and should use its ancillary authority under Title I¹⁰ and its permissive authority under Section 254(d) of the Communications Act of 1934, as amended (Act),¹¹ to require providers of these services to contribute to universal service. Likewise, even if the Commission found some of the services that are accessed through the use of the prepaid calling card services to be information services, there should be no impact on the requirement to pay access charges on calls made using these services. If an end user accesses information services using his prepaid calling card, more likely than not he will ultimately place a call using the card¹² and that call will be

¹⁰ See *IP-Enabled Services; Petition of SBC Communications Inc. for Forbearance*, Comments of the United States Telecom Association, WC Docket Nos. 04-36 and 04-29 at 33 (filed May 28, 2004).

¹¹ See 47 C.F.R. §254(d). The last sentence in Section 254(d) states that “[a]ny other provider of interstate *telecommunications* may be required to contribute to the preservation and advancement of universal service if the public interest so requires.” *Id.* (emphasis added). Further, an information service is defined in the Act as the “offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information *via telecommunications*” 47 C.F.R. §153(20) (emphasis added).

¹² For example, a caller may access the services of his prepaid calling card, initially pushing buttons to get a weather report or to determine how many minutes remain on the card, but then he will push another button to actually place a call, triggering the requirement that access charges – whether interstate or intrastate – be paid.

subject to access charges – either interstate or intrastate, depending on the originating and end points of the call.

CONCLUSION

The Commission should utilize its enforcement authority to ensure that all providers of prepaid calling cards are complying with the law affirmed by the Commission in the AT&T Order. The Commission should take no action on the Emergency Petition filed by AT&T.

Respectfully submitted,

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May 16, 2005

CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on May 16, 2005, the aforementioned Reply Comments of The United States Telecom Association were electronically filed with the Federal Communications Commission through its Electronic Comment Filing System and electronically mailed to the following:

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